

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

BECKLEY DIVISION

DERRICK HARRIS,

Petitioner,

v.

CIVIL ACTION NO. 5:16-cv-05816
(Criminal No. 5:07-cr-00006-01)

UNITED STATES OF AMERICA,

Respondent.

MEMORANDUM OPINION AND ORDER

On June 27, 2016, the Petitioner, through counsel, filed his *Second or Successive Motion to Correct Sentence Under 28 U.S.C. § 2255* (Document 257) in this matter, as well as a *Motion to Hold § 2255 Filing in Abeyance* (Document 258). By *Standing Order* (Document 259) entered on June 28, 2016, the matter was referred to the Honorable Dwane L. Tinsley, United States Magistrate Judge, for submission to this Court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636.

On September 5, 2018, the Magistrate Judge submitted a *Proposed Findings and Recommendation* (Document 266) wherein it is recommended that this Court deny the Petitioner's *Second or Successive Motion to Correct Sentence Under 28 U.S.C. § 2255*, deny as moot the Petitioner's *Motion to Hold § 2255 Filing in Abeyance*, and remove this matter from the Court's docket. Objections to the Magistrate Judge's *Proposed Findings and Recommendation* were due by September 24, 2018, and none were filed by either party.

The Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Failure to file timely objections constitutes a waiver of *de novo* review and the Petitioner's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); *see also Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984).

Accordingly, the Court **ADOPTS** and incorporates herein the findings and recommendation of the Magistrate Judge as contained in the *Proposed Findings and Recommendation*, and **ORDERS** that the Petitioner's *Second or Successive Motion to Correct Sentence Under 28 U.S.C. § 2255* (Document 257) be **DENIED**, the Petitioner's *Motion to Hold § 2255 Filing in Abeyance* (Document 258) be **DENIED AS MOOT**, and this matter be **REMOVED** from the Court's docket.

The Court **DIRECTS** the Clerk to send a certified copy of this Order to Magistrate Judge Tinsley, counsel of record, and any unrepresented party.

ENTER: September 28, 2018



IRENE C. BERGER
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF WEST VIRGINIA